

Middle Pecos Groundwater Conservation District
Minutes of May 17, 2016

On this the 17th of May, 2016, a regular board meeting and public hearing were held by the Middle Pecos Groundwater Conservation District in the office located at 405 North Spring Drive, Fort Stockton, Texas, with the following members present, to-wit:

Jerry McGuairt	President, Precinct 1
John Dorris	Vice President, Prec. 3 (Arrived @ 11:34 am)
M. R. Gonzalez	Secretary/Treasurer, Precinct 2
Janet Groth	Precinct 1
Merrell Daggett	Precinct 2
Alvaro Mandujano, Jr.	Precinct 4
Ronald Cooper	Precinct 4
Vanessa Cardwell	City of Fort Stockton
Terry Whigham	At Large

Quorum Present.

Board members absent: Weldon Blackwelder and Jeffery McMahon

Others present: Paul Weatherby, Mike Gershon, Gail Reeves, Ty Edwards, Harvey Gray, Melissa Mills, Jeff Williams, Brock Thompson, Ed McCarthy II, Raul Rodriguez, Gerald D. Lyda, Fred Tyler, Rick Dudman, Marty Jones, Greg Neal, Jimmy Perkins, Scott Courtney, James Cravens, Ernest Woodward, Doug May, Paula McGuairt, Gladys Dorris, Armando Mandujano, Ori White and Bob Beal/Fort Stockton Pioneer.

NOTE: Items were taken up in an order other than the posted agenda.

REGULAR BOARD MEETING

I Call to order regular Board meeting at 10:00 a.m. by President Jerry McGuairt.

PRODUCTION PERMIT HEARING for MANDUJANO BROTHERS.

I Call to order at 10:01 a.m. by President Jerry McGuairt.

Applicant's representatives: Armando Mandujano

Protestant to application: None

Public Comment: None

Board member Alvaro Mandujano, Jr. recused himself from proceedings due to a conflict of interest. (Disclosure Affidavit signed)

Assistant General Manager Ty Edwards presented the application to the Board. Mandujano Brothers has made application for a Production Permit with the Middle Pecos Groundwater Conservation District for a 2 well system located on Survey Name: Cathey Block OW Section 60, approximately 1.6 miles East of Cayanosa on Gamboa Rd, in Pecos County, Texas. The purpose of this well system is for Irrigation Use and requests 636 acre feet/year from the Pecos Valley Aquifer.

This is the farm previously owned by Zly. Well 2 is caved in, and a replacement well request has been submitted. There are a total of 159 acres and will have drip irrigation. The application is administratively complete.

No questions were asked.

II Adjourn hearing and consider and/or act on **Production Permit for Mandujano Brothers.**

Jerry McGuairt adjourned the hearing at 10:06 a.m.

Janet Groth made a motion to approve the production permit as presented for a 2 well system located on Survey Name: Cathey Block OW Section 60, approximately 1.6 miles East of Cohanosa on Gamboa Rd, in Pecos County, Texas. The purpose of this well system is for Irrigation Use and requests 636 acre feet/year from the Pecos Valley Aquifer. Motion seconded by Terry Whigham. Vote: 7 For. -0- Against. 1 Abstain. 3 Absent.

Returned to the Regular Board Meeting at 10:06 a.m.

REGULAR BOARD MEETING

II Comments from **public and media** No comments.

III Consider and/or act upon **Minutes of April 19, 2016.**
Vanessa Cardwell made a motion to table the minutes for April 19, 2016. Motion seconded by Janet Groth. Motion carried unanimously.

IV Consider and/or act upon **Minutes of May 2, 2016.**
The May 2, 2016 special called meeting did not have a quorum.

No action taken.

V Consider and/or act upon **Accounts Payable and Treasurer's Report and Line Item Transfers for the Month Ending April 30, 2016.**
Vanessa Cardwell made a motion to approve the accounts payable and treasurer's report for the month ending April 30, 2016. Motion seconded by Alvaro Mandujano, Jr. Motion carried unanimously.

- VI Consider and/or take action regarding **Republic Water Company of Texas, LLC's Request for Issuance of Writ of Mandamus** filed on May 10, 2016, in Pecos County 83rd District Court.

An Executive Session was called at 10:16 a.m. by Presiding Officer Jerry McGuairt pursuant to the Texas Open Meetings Act, Sections 551.071 of the Texas Government Code, to consult with attorney.

The Executive Session ended at 12:33 p.m., and a lunch break was taken. The Board reconvened into open session at 1:02 p.m. President McGuairt stated that no decisions or votes were made in executive session.

On advise of MPGCD legal counsel, no action taken.

- VII Consider and/or act on abatement in effect on **Republic Water Company of Texas, LLC's pending permit application**, administrative completeness of this application, and whether to set a hearing on, dismiss, and/or take other action on the application.

Manager Paul Weatherby reported that the application is administratively incomplete. Assistant Manager Ty Edwards said there are two reasons, 1) more information is needed to prove beneficial use; 2) more information is needed on the model run from USGS.

Vanessa Cardwell made a motion to declare that the application is administratively incomplete. Motion seconded by John Dorris. Vanessa Cardwell clarified that this does not impact the current abatement that is still in place. The application is still abated.

Marty Jones, attorney for Republic Water Company of Texas, LLC, requested to have the decision to declare their production permit application administratively incomplete in writing. He submitted that MPGCD is acting outside of statutory authority with the decision to abate their production permit application.

Vote: The motion carried unanimously. 9 For. -0- Against. 2 Absent.

- VIII Briefing then consider and/or take action regarding **Fort Stockton Holdings, L.P. v. Pecos County, Pecos County WCID No. 1, Middle Pecos GCD, City of Fort Stockton, and Brewster County GCD** on appeal at Court of Appeals, Eighth District of Texas (No. 08-15-00382-CV) and Fort Stockton Holdings, LP's requests for guidance regarding its historic and existing use permits listed in Ed McCarthy's correspondence dated May 10, 2016.

The Board discussed in Executive Session an update on the pending appeal. Fort Stockton Holdings, L.P. filed an appellants brief on 05-16-2016 which sets in motion a time frame deadline for the MPGCD to file a reply brief in which we have 30 days to do so.

On April 29th Marty Jones requested a meeting with Mike Gershon that included Ed and Eddie McCarthy. Mr. Jones advised Mr. Gershon that his client (Republic Water Company of Texas) had instructed him to file a Federal lawsuit. An agreement was reached in this meeting that certain items would be submitted for consideration on the next MPGCD agenda. 1) Consider and act to determine the administrative completeness of the pending permit application of Republic Water Company of Texas, LLC under Texas Water Code Section 36.114(h). MPGCD action: See agenda item #VII - the Board has taken action on it. 2) Consider and act to set a date for an initial preliminary hearing on the pending permit application of Republic Water Company of Texas, LLC. 3) Consider and act to contract with the State Office of Administrative Hearings to conduct a hearing concerning whether to grant the pending permit application of Republic Water Company of Texas, LLC. The requests for items 2 and 3 are inconsistent procedurally with what we have done with abating the application.

Mr. McCarthy, attorney for Fort Stockton Holdings, L.P., has asked the Board to address “how to pursue an application that relates to Fort Stockton Holdings, L.P. and its affiliates, and the Williams Families interest in water, primarily and specifically the historic and existing use permits.”

The following references an email from Ed McCarthy on 05-10-2016 @ 5:42 PM
1) How is Republic Water’s application for a new permit tied to the pending appeal by Fort Stockton Holdings, L.P.(FSH) of the district’s 2011 denial of FSH’s application for a new permit such that the district feels it cannot process the Republic application until after the appeal of the FSH application is complete in light of the fact that the District Court’s judgment granting the District’s partial motion for summary judgment is a final action meaning that there is no FSH application pending?

Board member Janet Groth said that on the advice of our attorney, and since item#1 is in litigation, there will be no public comment.

2) How can an application for a permit to use water produced from the groundwater estate owned by FSH be “separated” from the pending appeal of the denial of the 2011 FSH permit application such that the district would process and grant the application:

Regarding item #2, you can file a new application that is disconnected from the historic and existing use permits. To be clear - with regards to “*such that the district would process and grant the application*” – there is no implied denial, nor approval, of any application just through the process of applying.

The statements offered by Janet Groth were guidance, no motion was made.

No action taken.

- IX Consider and/or act upon **possible rule amendments regarding** District procedure for addressing (A) **emergency situations of District constituents** and (B) **reconsideration of District decisions**.

John Dorris made a motion to proceed with possible rule amendments regarding District procedure for addressing (A) emergency situations of District constituents and (B) reconsideration of District decisions. Motion seconded by M. R. Gonzalez. The motion carried unanimously

- X **Briefing on interim legislative developments** then consider and/or act regarding Board's position on issues relevant to Texas Legislature's interim charges.

Mr. Paul Weatherby addressed the Board. MPGCD views to present to the 85th Texas Legislature regular session that begins in November 2016:

- 1) Develop a Memorandum of Understanding (MOU) with the Railroad Commission regarding major violations that can contaminate groundwater. Determine if sufficient safety standards exist to protect groundwater from contamination by disposal and injection wells.
- 2) Would like to see our enabling legislation revised to require a Board Director to attend a minimum of 4 meetings per calendar year.
- 3) Defeat legislation that would undermine a Groundwater Conservation District authority if brackish zones are developed.
- 4) Support Groundwater Conservation Districts, local control.
- 5) Review "unprotected" areas with Texas Commission on Environmental Quality and the Texas Water Development Board for Priority Groundwater Management Area's in GMA 3.
- 6) A Groundwater Conservation District (GCD) needs to be in place in BOTH the production and receiving area to assure goals of Groundwater management.
- 7) Further discussion reference a permit for "Standby" needs. Actual daily export vs standby can cause issues with setting Desired Future Conditions and with a "water Budget" based on modeled available Groundwater, etc.
- 8) An applicant(s) requesting that any water be purchased/sold into a "water grid" pipeline must be a recognized political subdivision.
- 9) Address the MPGCD export fee authority using language from 2005 legislation.
- 10) Funding for plugging San Andres Formation Flowing wells.
- 11) Work to have GCD's be provided notice of injection well permits issued by RRC.

- XI Consider and/or act on April 25, 2016 letter complaint submitted by City Water Attorney Mark Harral/Fort Stockton to 112th District Attorney Laurie English and Attorney General of the State of Texas alleging violation of Texas Open Meetings Act.

The City of Fort Stockton requested immediate assistance from the District Attorney's office and/or Texas Attorney General to investigate potential violations of the Texas Open Meetings Act during the City's water production permit hearing held on April 19th, 2016. The reasons given:

- 1) §551.004 Open Meetings required by charter and §551.071 consultation with attorney.
- 2) §551.102 Requirement to vote or take final action in open meeting.
- 3) §551.103 Certified agenda or recording required and §551.104 certified agenda or recording; preservation; disclosure.

MPGCD attorney, Mike Gershon, reported that the Board of Directors did not breach "code of conduct" in executive session.

No action taken.

- XII **Progress Reports: Well Registrations, Production Permits, Drilling Permits, Data Loggers, Drought Monitor Map and ongoing Water Quality Analysis.**

- Well Registrations: Progress report in notebooks.
- Drought Monitor Map: The current drought monitor map in their notebooks.
- Letters are being sent to local realtors to inform them that a change of well ownership is required when property with a water well is sold.
- Flyover results: 4 incidents were found in the 120 square miles. The Railroad Commission did not fly with us.

- XIII Consider and/or act upon **General Manager's Correspondence.**

- Pecos County Commissioners' Court passed a resolution in support of the Middle Pecos GCD and the decisions made by the District to protect Pecos County water with regard to Fort Stockton Holdings LP case #08-15-00382-CV
- Texas Groundwater Summit, August 23-25, 2016.
- Jeffery McMahon turned in his resignation from the Board on May 16, 2016
- Janet Groth and Vanessa Cardwell will review and award the \$1,000 scholarships for the submitted essays for the Imperial and Iraan High Schools. Gladys Dorris will review and award the \$1,000 scholarship for the submitted essays for Fort Stockton High School.

XIV **Directors' comments.**

- Janet Groth asked if MPGCD rules have a statute of limitation, and the answer was no.

XV Consider and/or act upon **agenda for next** meeting.

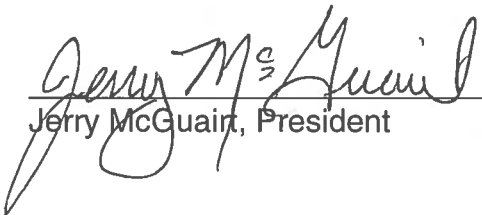
- Proposed Rule Hearing
- Renewal of Tax Abatement Guidelines

XVI Adjourn.

Merrell Daggett made a motion to adjourn the meeting at 2:09 p.m. Motion seconded by John Dorris. Motion carried unanimously.



M. R. Gonzalez, Secretary/Treasurer



Jerry McGuair, President

Date Approved 6-21-16